



BAC 7710-FW-P

POSTAL REGULATORY COMMISSION

39 CFR Part 3001

[Docket No. RM2015-8; Order No. 2589]

Automatic Docket Closure Procedures

AGENCY: Postal Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Commission is issuing a set of final rules establishing new procedures concerning automatic closure of Commission dockets after an extended period of docket inactivity. The rules will permit a simplified docket closure process. Relative to the proposed rules, some of the changes are substantive and others are minor and non-substantive.

DATES: *Effective* [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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SUPPLEMENTARY INFORMATION:

Regulatory History

80 FR 26517, May 8, 2015

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I. Introduction

The Postal Accountability and Enhancement Act (PAEA), Pub. L. 109-435, 120 Stat. 3198 (2006), authorizes the Commission to develop rules and establish procedures that it deems necessary and proper to carry out Commission functions.¹

On May 4, 2015, the Commission issued a notice of proposed rulemaking establishing procedures that would simplify the docket closure process by permitting automatic closure of a docket following a significant period of inactivity.² The Notice requested comments from interested persons regarding the proposed rules. The Commission received comments from the Postal Service and the Public Representative.³ After consideration of the comments

¹ See 39 U.S.C. 503; *see also* Postal Reorganization Act, Pub. L. 91-375, 84 Stat. 759 (1970), at section 3603.

² Docket No. RM2015-8, Order No. 2465, Notice of Proposed Rulemaking Regarding Automatic Closure of Inactive Dockets, May 4, 2015 (Notice); *see also* 80 FR 26517 (May 8, 2015).

³ See Initial Comments of the United States Postal Service, June 8, 2015 (Postal Service Comments); Public Representative Comments, June 8, 2015 (PR Comments).

submitted, the Commission adopts the proposed rules, modified as described below.

II. Comments

The Postal Service and Public Representative offered positive comments and suggested revisions with respect to the Commission's proposed rules.

The Postal Service agrees that an automatic closure procedure would promote efficient docket management and provide clarity for the public because it would clear out items listed on the Commission's Web site. Postal Service Comments at 1. However, the Postal Service has concerns that, in certain proceedings, a docket may be automatically closed due to 12 consecutive months of inactivity prior to a final order being issued by the Commission. *Id.* at 1-2. The Postal Service recommends proposed rule 3001.44(a) be revised to indicate that if the final order in a docket is pending, it will not be subject to automatic closure. *Id.* at 2.

In addition, the Postal Service recommends that the Commission provide notice to the public of the impending docket closure at least 30 days prior to the automatic closure date. *Id.* The Postal Service also suggests that a motion to stay automatic closure be filed at least 15 days prior to closing, rather than 10 days prior to closing, in order to provide parties ample time to file answers pursuant to rule 3001.21. *Id.* at 2-3.

Finally, the Postal Service argues that because the Commission does not file motions under rule 3001.21, a separate paragraph should be added to

indicate that the Commission may issue an order *sua sponte* keeping a docket open. *Id.* at 3.

The Public Representative supports the establishment of rules that create more streamlined procedures for closing inactive dockets. PR Comments at 2. However, she recommends clarifying the meaning of “good cause” found in rule 3001.44(c) as interested persons may not be aware that grounds for a motion to reopen exist, and she provides definitions and terms used by other agencies. *Id.*

The Public Representative does not go so far as to recommend filing a public notice with the **Federal Register**; however, she suggests providing notification to the public via the Commission’s Web site. She argues that such a notice would “achieve due process and transparency without significant administrative burden or loss of efficiency.” *Id.* at 3.

Finally, the Public Representative recommends that the rules be revised in order to clarify that the Commission may issue an order *sua sponte*, keeping a docket open or reopening an automatically closed docket, as the Commission does not file motions pursuant to rule 3001.21. *Id.* at 2-3.

III. Commission Analysis

Proposed rule 3001.44(a). Paragraph (a) of proposed rule 3001.44 would permit the Commission to automatically close a docket after 12 consecutive months of inactivity, in order to ensure that information provided to the public on the status of dockets remains current. In its comments, the Postal Service describes a situation that could arise in which a docket has been automatically

closed due to inactivity despite the eventual issuance of a final order. The Postal Service provides examples of similar situations including Docket No. MC2010-24, concerning the Commission's review of Nonpostal Services language for the Mail Classification Schedule (MCS). The initial notice was issued on May 5, 2010, and comments were received on June 4, 2010, and June 18, 2010.⁴ However, the docket saw no further activity until the Commission issued its final order on December 11, 2012.⁵

The Postal Service recommends the Commission add language to paragraph (a) indicating that if the final order in a docket is pending, it will not be subject to automatic closure. Based on consideration of the Postal Service's comment and the possibility that certain dockets may take significant time to resolve, the Commission agrees with the Postal Service that a revision to the rule is necessary. Paragraph (a) will be revised to exclude from automatic closure those dockets in which a final determination by the Commission is required by rule or statute, or if the Commission has otherwise indicated a final order is forthcoming in the docket, but is still outstanding.

⁴ See Docket No. MC2010-24, Order No. 457, Notice and Order Concerning Mail Classification Schedule Language for Nonpostal Services, May 7, 2010; see also Public Representative Comments in Response to Order No. 457, June 4, 2010; Reply Comments of the United States Postal Service Pursuant to Order No. 457, June 18, 2010.

⁵ See Docket No. MC2010-24, Order Approving Mail Classification Schedule Descriptions and Prices for Nonpostal Service Products, December 11, 2012 (Order No. 1575). Docket No. MC2010-24 was established to consider the Postal Service's proposed nonpostal MCS language filed in different dockets and the final order was delayed pending completion of litigation and resolution of Docket No. MC2008-1 (Phase II R), which involved Commission review (on remand) of nonpostal services. Order No. 1575 at 3; see also Docket No. MC2008-1 (Phase II R), Order No. 1326, Order Resolving Issues on Remand, April 30, 2012.

Proposed rule 3001.44(b) and (d). Both the Postal Service and the Public Representative recommend revisions to the proposed rules that would clarify the Commission's ability to issue an order staying automatic closure or reopening an automatically closed docket as the Commission does not file motions pursuant to rule 3001.21. The Commission recognizes that proposed paragraphs (b) and (d), could be interpreted to read that the Commission may stay automatic closure or reopen an automatically closed docket via motion. As the Commission would instead issue an order *sua sponte*, clarification to the rule is necessary. The Commission declines to adopt the particular revised language proposed by the Postal Service and instead revises proposed paragraphs (b) and (d) by removing both paragraphs from proposed rule 3001.44 to create new rule 3001.45. As revised, rule 3001.44 describes automatic docket closure and rule 3001.45 describes actions permitted by interested persons and the Commission concerning automatic docket closure. Subparagraphs (a)(2) and (b)(2) were added to indicate the Commission may stay an automatic docket closure or reopen an automatically closed docket upon its own order.

In addition, the Public Representative argues that proposed rule 3001.44(d) could benefit from a more detailed definition of "good cause." PR Comments at 2. She provides terms used by other agencies such as "new and material information" not available or known at the time of the determination. *Id.* However, the addition of specific terms such as "new" and "material," or requiring that information became available only after a docket was automatically closed,

creates restrictive requirements that may unintentionally limit interested persons from requesting an automatically closed docket be reopened. The Commission favors the use of a broader term that puts fewer limits on an interested person's justification for a motion to reopen an automatically closed docket and prefers to use its discretion when evaluating whether the justification for reopening an automatically closed docket qualifies as "good cause."⁶ The Commission, therefore, declines to adopt the Public Representative's recommended revisions to rule 3001.44(d).

Finally, proposed rule 3001.44(b) required a motion to stay automatic closure be filed at least 10 days prior to the automatic closure date. The Postal Service suggested an increase in the time for filing a motion to stay from 10 days to 15 days prior to the automatic docket closure date, in order to provide any participant with an opportunity to answer the motion pursuant to rule 3001.21(b). Postal Service Comments at 2-3. The Commission agrees and accepts the Postal Service's recommendation. This revision is reflected in rule 3001.45(a)(1) and (a)(2).

Public notice. The Postal Service suggests some form of public notice be given 30 days prior to the automatic closure date. Postal Service Comments at

⁶ See Docket No. RM2012-4, Order No. 2080, Order Adopting Amended Rules of Procedure for Nature of Service Proceedings Under 39 U.S.C. 3611, May 20, 2014, at 16. In Docket No. RM2012-4, when prompted by commenters to clarify the meaning of "good cause," the Commission found it was unnecessary to specify what circumstances qualified as "good cause" because the standard was intended to be "flexible and dependent upon specific factual circumstances." *Id.*

2. The Public Representative argues that a formal public notice (published in the **Federal Register**) is unnecessary and instead recommends a portion on the Commission's Web site be used to broadcast dockets that would automatically close in the next 6 months and provide the deadline for filing a motion to stay automatic closure. PR Comments at 3.

The Commission finds merit in providing transparency to the docket closure process as suggested by the Postal Service and Public Representative. Providing information concerning potential automatic docket closures on the Commission's Web site will not be costly nor will it materially interfere with the simplification of the docket closure process. The Commission revises the rule to include a new paragraph that states each month the Commission will post on its Web site a list of dockets that will, without action taken by parties or the Commission, be subject to automatic closure in the following month and the scheduled date of closure for each docket. This revision is reflected in rule 3001.44(b).

Additional minor correction. The Commission makes the following minor correction:

- In paragraphs (a) and (b) of rule 3001.45 "any interested party or participant" is simplified to read "interested persons."

IV. Ordering Paragraphs

It is ordered:

1. Part 3001 of title 39, Code of Federal Regulations, is revised as set forth below the signature of this Order, effective 30 days after publication in the **Federal Register**.

2. The Secretary shall arrange for publication of this order in the **Federal Register**.

List of Subjects in 39 CFR Part 3001

Administrative practice and procedure, Postal Service.

For the reasons discussed in the preamble, the Commission amends chapter III of title 39 of the Code of Federal Regulations as follows:

Part 3001—RULES OF PRACTICE AND PROCEDURE

1. The authority citation of part 3001 continues to read as follows:

Authority: 39 U.S.C. 404(d); 503; 504; 3661.

2. Add § 3001.44 to read as follows:

§ 3001.44 Automatic Closure of Inactive Docket.

(a) The Commission shall automatically close a docket in which there has been no activity of record by any interested person for 12 consecutive months, except those dockets in which the Commission must issue a final determination by rule or statute, or if the Commission has otherwise indicated a final order is forthcoming in the docket and has yet to do so.

(b) Each month the Commission shall post on the Web site a list of dockets that will be subject to automatic closure in the following month and will include the date on which the docket will automatically close.

3. Add § 3001.45 to read as follows:

§ 3001.45 Motions to Stay Automatic Closure or Reopen Automatically Closed Dockets.

(a) *Motion to stay automatic closure.* (1) Interested persons, including the Postal Service or a Public Representative, may file a motion to stay automatic closure, pursuant to § 3001.21, and request that the docket remain open for a specified term not to exceed 12 months. Motions to stay automatic closure must be filed at least 15 days prior to the automatic closure date.

(2) The Commission may order a docket remain open for a specified term not to exceed 12 months and must file such order at least 15 days prior to the automatic closure date.

(b) *Motion to reopen automatically closed docket.* (1) If, at any time after a docket has been automatically closed, interested persons, including the Postal Service or a Public Representative, may file a motion to reopen an automatically closed docket, pursuant to § 3001.21, and must set forth with particularity good cause for reopening the docket.

(2) The Commission may order an automatically closed docket to be reopened, and must set forth with particularity good cause for reopening the docket.

By the Commission.

Ruth Ann Abrams,

Acting Secretary.

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